

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBIN KROHN, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

PACIFIC MARKET INTERNATIONAL,
LLC, a corporation,

Defendant.

Case No. 2:24-cv-00200-TL

**NOTICE OF DEFENDANT PACIFIC
MARKET INTERNATIONAL, LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION TO CONSOLIDATE**

NOTE ON MOTION CALENDAR:
APRIL 12, 2024

ORAL ARGUMENT REQUESTED

On April 8, 2024, Defendant Pacific Market International, LLC ("PMI") filed an
Opposition to Plaintiffs' Motion to Consolidate in *Franzetti, et al. v. Pacific Market
International, LLC, et al.*, Case No. 2:24-cv-00191-TL (the "Opposition"). The Opposition is
attached hereto as Exhibit 1.

DATED April 8, 2024

Respectfully submitted,

K&L GATES LLP

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EXHIBIT 1

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIANA FRANZETTI, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PACIFIC MARKET INTERNATIONAL,
LLC, D/B/A PMI WORLDWIDE, AND
DOES 1-10,

Defendant.

Case No. 2:24-cv-00191-TL

**DEFENDANT PACIFIC MARKET
INTERNATIONAL, LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION TO CONSOLIDATE
RELATED ACTIONS UNDER FED. R.
CIV. P. 42(A) AND LCR 42 AND TO
SET DEADLINES**

NOTE ON MOTION CALENDAR:
APRIL 12, 2024

ORAL ARGUMENT REQUESTED

Defendant Pacific Market International, LLC (“PMI”) respectfully submits this opposition to plaintiffs’ motion to consolidate what they describe as “[c]ompeting putative class actions.” Dkt. No. 23 at 7.

ARGUMENT

No one is entitled to file duplicative or “competing” litigation. In fact, it is hornbook law that duplicative lawsuits are wasteful and should not be filed. “Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.” *Adams v. Cal. Dep’t of Health Servs.*, 487 F.3d 685, 688 (9th Cir. 2007) (quotation marks omitted); *see also Walton v. Eaton Corp.*, 563 F. 2d 66, 70 (3d Cir. 1977) (“[t]here is no reason why a court should be bothered or a litigant harassed with duplicating lawsuits on the same docket”) (quotation marks omitted). Yet in their motion for consolidation, plaintiffs in *Krohn* and *Barbu* readily agree that their lawsuits are, practically speaking, copies of the earlier-filed *Franzetti* action.¹ According to those plaintiffs, their lawsuits and *Franzetti*:

- “[are] based on the same factual allegations;”
- “arise from the same underlying action;”
- “assert[s] claims on behalf of the same or similar classes of persons;”
- “allege that class members suffered similar harms;” and
- “bring[] similar types of warranty, consumer protection and/or common law claims.”

Dkt. No. 23 at 5, 6. Plaintiffs have accordingly established that there is no need for their lawsuits. In light of *Franzetti*, they serve no legitimate purpose and provide no benefit to the purported class members on whose behalf they were filed. Plaintiffs do not argue otherwise.

¹ As explained in PMI’s corporate disclosure statement, plaintiffs *Franzetti*, *Krohn* and *Barbu* have all erroneously sued the wrong corporate entity. *See* Dkt. No. 15. The correct corporate entity is PMI WW Brands, LLC. *See id.*

1 But, plaintiffs say, they have satisfied the requirements for consolidation, and therefore
 2 they are entitled to have their lawsuits consolidated with *Franzetti*. This ignores the fact that these
 3 lawsuits *also* satisfy the requirements for a dismissal or stay under the first-to-file rule, because
 4 they (1) were filed after *Franzetti*, (2) involve the same defendant and the same purported class as
 5 *Franzetti*, and (3) involve the same central questions as *Franzetti*. See *Kohn Law Grp., Inc. v.*
 6 *Auto Parts Mfg., Miss., Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015); *Pacesetter Sys., Inc. v.*
 7 *Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982); see also *Krohn*, Dkt. No. 33 at 5-7.

8 The Court should dismiss or stay *Krohn* and *Barbu* rather than consolidate them with
 9 *Franzetti*. There was no reason for these lawsuits to have been filed in the first place. A dismissal
 10 or stay will further the policy disfavoring duplicative litigation. Consolidation, on the other hand,
 11 will send a message to potential claimants that there is no downside, and only potential upside, to
 12 filing pointless copycat lawsuits.

13 Consolidation creates other drawbacks as well. Consolidation means that PMI will have
 14 to bear the unnecessary burden of conducting discovery against not one plaintiff, but two or three
 15 or possibly more plaintiffs. And, given that the plaintiffs in *Franzetti*, *Krohn*, and *Barbu* are
 16 represented by no less than eight law firms, it is not hard to imagine that it may be more difficult
 17 to achieve a negotiated resolution than it would be if only one lawsuit were in play. A dismissal
 18 or stay presents neither of these problems.

19 The two district court orders cited by plaintiffs for the proposition that the Court should
 20 consolidate rather than dismiss or stay does not change this analysis or require a different outcome.
 21 In *Ekin v. Amazon Services, LLC*, No. C14-0244-JCC, 2014 WL 12028588 (W.D. Wash. May 28,
 22 2014), all parties, including the defendant, *agreed* to consolidation. *Id.* at *1. The plaintiff who
 23 first filed then requested that the court stay the second-filed action. *Id.* But because all parties had
 24 agreed to consolidation, and the court had already granted the consolidation request, the court
 25 decided that dismissal under the first-to-file rule was inappropriate. *Id.* at *2 n.1. Here, of course,
 26 all parties have not agreed to consolidation, and the question of whether to consolidate or dismiss

1 or stay has not been decided. *Pecznick v. Amazon.com, Inc.*, No. 2:22-cv-00743-TL, 2022 WL
 2 4483123 (W.D. Wash. Sept. 27, 2022) was also a case in which the defendant supported
 3 consolidation and the plaintiffs in the first-filed case moved to dismiss the second-filed case under
 4 the first-to-file rule. This Court denied the motion to dismiss because the movants *conceded* that
 5 they did not satisfy the requirements of the rule. *Id.* at *2 (noting that movants argued “that both
 6 the factual and legal claims are ‘vastly different’”). PMI makes no such concession here — indeed,
 7 the only relevant concession is the admission by plaintiffs as to the striking similarity of their
 8 lawsuits.

9 Moreover, the fact that in *Ekin* and *Pecznick* the defendant *did not oppose* consolidation is
 10 a critical difference, because it means that in those cases the defendant did not argue, and the court
 11 did not consider, that consolidation would saddle the defendant with the unnecessary burden of
 12 conducting discovery against additional plaintiffs. Nor did the defendant argue, or the court
 13 consider, that consolidation rather than a dismissal or a stay raises the possibility of making
 14 settlement more difficult to achieve.

15 Most fundamentally, in *Ekin* and *Pecznick*, the courts did not consider the disfavored nature
 16 of copycat lawsuits as a basis for a dismissal or stay rather than consolidation. As the parties who
 17 chose to file such lawsuits, Ms. Krohn and Ms. Barbu should have to justify why consolidation is
 18 preferable to dismissal. They can proffer no such justification, because their lawsuits serve no
 19 legitimate purpose. When there is no good reason to keep alive a lawsuit that should not have been
 20 filed in the first place, dismissal is appropriate.

21 While plaintiffs contend that consolidation is the more equitable outcome, the opposite is
 22 in fact true. A dismissal or stay of the later-filed actions will have zero negative impact on the
 23 members of the purported class, because all of their rights can be protected and vindicated through
 24 *Franzetti*. There is accordingly no equitable reason to eschew a dismissal or stay. On the other
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1 hand, in light of the disfavored nature of these lawsuits and the fact that consolidation will have
 2 an adverse impact on PMI, the equities counsel against allowing them to proceed.²

3 CONCLUSION

4 There is no legitimate reason why parties who filed unnecessary, duplicative lawsuits
 5 should be entitled to have their cases consolidated rather than dismissed. Moreover, the fact that
 6 consolidation has downsides that a dismissal or stay does not have makes the argument against
 7 consolidation even stronger. For the foregoing reasons, PMI respectfully requests that the Court
 8 deny plaintiffs' consolidation motion.

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 23 ² Although not relevant to their consolidation motion, plaintiffs argue that they may bring a nationwide class action
 24 under the Washington Consumer Protection Act because the Washington Supreme Court, on a question certified to it
 25 by the Western District of Washington, held that the Act may be applied extraterritorially. *Thornell v. Seattle Serv.*
 26 *Bureau, Inc.*, 184 Wn.2d 793, 363 P.3d 587, 592 (2015). However, plaintiffs neglect to note that when the Washington
 Supreme Court returned the matter to the Western District of Washington, the court held that under choice-of-law
 principles, the out-of-state plaintiffs could *not* sue under the Act for injuries sustained out of state, *Thornell v. Seattle*
Serv. Bureau, Inc., No. C14-1601-MJP, 2016 WL 3227954, at *2-4 (W.D. Wash. June 13, 2016)—a holding that the
 Ninth Circuit affirmed, *Thornell v. Seattle Serv. Bureau, Inc.*, 742 F. App'x 189, 190-93 (9th Cir. 2018).

1 DATED April 8, 2024

Respectfully submitted,

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21 I certify that this memorandum contains
22 1,259 words, in compliance with the Local
23 Civil Rules.
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